



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

November 17, 2014

To:

Hon. Richard O. Wright
Circuit Court Judge
Marquette County Courthouse
P.O. Box 187
Montello, WI 53949

Susan K. Raimer
Clerk of Circuit Court
Columbia County Courthouse
400 DeWitt St., P.O. Box 587
Portage, WI 53901-2157

Troy Dean Cross
Asst. District Attorney
P.O. Box 638
Portage, WI 53901-0638

Anthony J. Jurek
6907 University Avenue #191
Middleton, WI 53562-2767

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Aaron Scott 461771
Green Bay Corr. Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

You are hereby notified that the Court has entered the following opinion and order:

2014AP1162-CRNM State of Wisconsin v. Aaron Scott (L.C. #2010CF261)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Attorney Anthony Jurek, appointed counsel for Aaron Scott, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Scott with a copy of the report, and both counsel and this court advised him of his right to file a response. Scott has not responded to the current no-merit report. After our

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

In an earlier no-merit appeal by Scott, No. 2011AP2795-CRNM, we rejected the no-merit report after counsel concluded that there was arguable merit to an issue raised by Scott in his response. New counsel was later appointed, and new counsel concluded that the issue lacks arguable merit. Accordingly, we have allowed new counsel to file a no-merit report addressing only that issue. Our discussion in this appeal will address the issues raised by counsel and Scott in the original no-merit appeal, and also the new no-merit report.

Scott pled guilty to one count of armed robbery as a party to the crime and one count of felon in possession of a firearm, both as a repeater. On the first count, the court imposed a sentence of fourteen years of initial confinement and six years of extended supervision, with a concurrent three-year sentence on the second count.

The no-merit report addresses whether Scott's pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986), and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Scott was waiving, and other matters.

In his original no-merit response, Scott asserted that his trial counsel "promised" him that the initial confinement portion of his sentence would not exceed twelve years. Scott further asserted that, if he had known he would be sentenced to more than twelve years, he would not have pled guilty.

In current counsel's no-merit report, counsel asserts that this issue lacks arguable merit because Scott's assertion that he would not have pled guilty is merely conclusory because Scott did not explain why the two-year difference in sentences would have changed his plea decision. Counsel relies on *State v. Bentley*, 201 Wis. 2d 303, 548 N.W.2d 50 (1996). There, the court held that the defendant did not sufficiently explain why a two-year difference in parole eligibility dates would have changed his plea decision. *Id.* at 316-18. We conclude that this issue lacks arguable merit because Scott has not explained why he would have pled guilty when expecting a possible sentence of up to twelve years, but would have gone to trial if he believed it could have been up to fourteen years.

The original no-merit report discusses whether the State breached the plea agreement at sentencing. There is no merit to this issue because the State made the agreed-to recommendation, and does not appear to have undermined that recommendation with other comments.

In Scott's original response, he asserted that the circuit court erred by considering his race at sentencing, and that counsel was ineffective by failing to object. As part of its statement while imposing sentence, the court stated:

He just got out of prison. It was almost like he wanted to go back to prison because his likelihood of coming up here, pulling this off, not getting caught, you know, three guys of color tooling around Portage, do you think that they are not going to get caught? It did not make a lot of sense, did it?

Scott asserts that the court was implying that three African-American men should not be in "predomina[ntly] Caucasian town of Portage and expect not to be racially profiled, and perhaps arrested for any crime that may occur."

Scott's reading of this statement is not reasonable. The only reasonable reading of the statement, in context, is that the court was describing the crime as ill-conceived because the defendants' ethnicity would make them easily found and apprehended, once their description was made widely available. There is no arguable merit to this issue.

The no-merit report addresses whether the sentencing court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Anthony Jurek is relieved of further representation of Aaron Scott in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals